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OFFICE OF PETITIONS

In re Patent No. 6,879,327	:	DECISION ON
Mathur, et al.	:	PATENT TERM ADJUSTMENT
Issue Date: April 12, 2005	:	AND
Application No. 09/935,006	:	NOTICE OF INTENT
Filed: August 21, 2001	:	TO ISSUE
Attorney Docket No. 07844-486001	:	CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)", filed May 23, 2005. Patentee requests that the patent term adjustment indicated on the patent be corrected from one hundred ninety-two (192) days to two hundred sixty-six (266) days.

The petition is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **two hundred fifty-six (256)** days.

On April 12, 2005, the above-identified application matured into U.S. Patent No. 6,879,327. The instant request for reconsideration filed May 23, 2005 was timely filed within two months of the date the patent issued. See § 1.705(d). The Patent issued with a Patent Term Adjustment of one hundred ninety-two (192) days. Patentee states that the determination of patent term adjustment days should not have been assessed applicant delay of seventy-four (74) days for the submission of a "COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE", filed on January 10, 2005.

The adjustment of seventy-four (74) days for the filing of a "COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE" has been found to be incorrect.¹ Accordingly, applicant delay with respect to this filing should have been zero (0) days.

However, applicant was improperly assessed delay of nineteen (19) days for the filing of a Rule 312 Amendment, also filed on January 10, 2005. Pursuant to 37 C.F.R. § 1.704(c)(10)(i), the number of days of delay assessed should be the number of days "beginning on the date the amendment under 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under 1.312 or such other paper." Here, a Supplemental Notice of Allowability and Response to Rule 312 Communication were mailed on February 7, 2005. Accordingly, applicant delay of twenty-nine (29) days should have been assessed for the filing of the Rule 312 Amendment, not nineteen (19) days.

In view thereof, the correct determination of PTA at the time of issuance is two hundred fifty-six (256) days (347 days of PTO delay, reduced by 91 (29+29+33) days of applicant delay).

Receipt of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. § 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **two hundred fifty-six (256)** days subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enc: draft certificate of correction

¹ See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed, 1247 Off. Gaz. 111 (June 26, 2001).